C. F. 72.

1924.

Department of L.R. Sec A

OFFICE Board of Revenue

STATION Madras

Mis No. 897	
Dated 14-4-24	

"A" Tur

B 1181

24

	Date	Initial.
Given for copying		
Copied		
Examined		
Signed		
Given for despatch		
Despatched	17.4.24	
Indexed		
To be destroyed on		

ges in the file

(SUBJECT.)

Assignment - Land (S. Kanara) Mangalore town - S. no. 220 - Private sale - Fraud & Suppression - Revision petn. Orders passed

* Not to be filled in the case of permanent records.

1521
II

10 JAN 1924
LAND

B175

The Hon'ble Members of the Board of Revenue,

Land Revenue ,

M A D R A S.

Darkhast Revision Appeal No. of 1924.

Francis Cunha, son of Domingo Cunha, residing in Kodialbail Village, Mangalore Town. } Appellant.

The Appellant begs to appeal against the order of the Collector, South Kanara District, passed in the Proceedings D, Dis. No. 7105-23-A1 dated 6th december last. The appellant's case is briefly the followings-

1. In the year 1830 the lands comprised in Warg No. 65 of Kodialbail village No. 104A, Mangalore Taluk, South Kanara District, were obtained on mulgeni by Appellant's father, Domingo Cunha, from one Martin Coelho and the muli right of these lands was purchased by the appellant from one J. M. Coelho, the legal representative of the said Martin Coelho on the 6th May 1878. In the year 1891 he sold a portion of them to one Manuel Pinto and he has been in full possession of the rest of it.

2. At the Survey, the lands comprised in the above warg and which the appellant had purchased in 1878 have been demarcated as T.S. Nos. 226, 229 and 230. A map of the locality is enclosed. Of the above fields T.S.No. 230 represents the plot of land sold away to Manuel Pinto and T.S. Nos. 226 and 229 those which continued to

be in Appellant s possession. T.S. Nos. 228 and 232 are Municipal roads and T.S. No. 229 is the pathway to Appellant s house and garden in T.S. No. 226 from the above Municipal road T.S. Nos. 228 and 232.

3. At the survey T.S. No. 229 was separately demarcated and registered as Poramboke and T.S. No. 226 alone was registered as patta in Appellant's name.

4. The pathway (T.S. No. 229) is used only by the Appellant and nobody else. It was Appellant's private (warg) land and he had been paying assessment on it and there was therefore no justification for the Survey Department to have taken it as Poramboke in the registers prepared by it The appellant received no notice of the change and he was not even consulted when the land was so registered

5. The Settlement Department which followed Survey does not appear to have made any enquiries as to private rights of warg lands registered blindly as Poramboke by the Survey Department and that Department also did not point out in pattas as to what lands which had been private warg property were removed from patta.

6. Unlike other Districts the lands in Kanara were not indicated by Paimash Nos in the pre-Survey and pre-Settlement records and the pattas issued at Settlement contained only warg numbers and it was not possible to find out what bits of warg lands were registered as Poramboke and excluded from patta.

7. The Appellant became aware of the fact that

his warg pathway was taken as a separate number and registered as Poramboke only in 1920 and he immediately represented to the Collector that at Survey and Settlement an error had been committed in the registry of T.S. No. 229 as Poramboke and prayed that it might be rectified and the field returned to patta.

8. On the above petition the Tahsildar made an enquiry and it resulted in his incorrectly treating appellant's representation of 1920 as a darkhast case and assigning him (Appellant) T.S.No. 229 (the land in question) on ground rent patta at Rs. 235 an acre and collecting from him a site value of Rs. 18-12-0 and ordering him in addition to pay back assessment from the year of Settlement.

9. The appellant appealed to the Collector against the above order and the only relief he (the Collector) ordered is the cancellation of that portion of the Tahsildar's order which related to the collection of the assessment from the year of Settlement.

10. The history of the case as detailed above will convince the Hon'ble Board that injustice has been done to the Appellant. The pathway is part and parcel of the appellant's warg land; he paid assessment on it until the year of Settlement; he did not relinquish it at any time; he alone uses the pathway (and this is proved by the Tahsildar's agreement to assign it to the appellant) and nobody else has any claim to it. This is a simple case made complicated by the Revenue Officials in which an error committed at the Settlement has to be rectified.

It is very unjust to collect value from Appellant's own land and to levy a heavy ground rent on it.

11. In no case in the District is ground rent charged on warg lands. TheCollector in his p8 order seems to think that the Appellant's representation should have been made at the time of Settlement and that his present request is too late. The Appellant has already shown above why it was not possible for him to have found out theerror at the time of Settlement or immediately thereafter. The Hon'ble Board is aware that mistakes of this sort are not uncommon and they are rectified in the course of the Revenue Administration.

12. The plot in question T.S. No. 229 is a narrow strip of land 9 feet in breadth and 66 yards in length and about 5 cents in extent which lies between two patta lands of adjoining wargdars and is a blind lane leading to and forming the only pathway to the appellant's house. It cannot be used by him for any other purpose whatsoever. The Adangal rate of assessment for the said plot will come up to only about two Annas per year at the rate of Rs. 2 per acre of waste land which is followed in this district. Even for the garden of the appellant which is about 81 cents of land, the appellant pays an assessment of Rs. 4-14-0 per year at Rs. 6 per acre, so that it is not only highly incongruous but unreasonable that the pathway to the Appellant's house should be assess--ed at Rs. 11- 4- 0 per year.

13. The Appellant begs to submit that the lower court has totally ignored the fact that the said plot T.S. No. ~~220~~ 229 forms Appellant's patta land as is borne out by the certified

copies of documents filed by the Appellant before the lower court that it has been in the possession and enjoyment of the appellant and his predecessors-in-title from time immemorial and that the Government have no right whatsoever to the said plot. The lower court has erred in holding that the survey is binding on all parties. The Survey of Mangalore Town and of South Kanara was not carried out according to the provisions laid down in Act 26 of 1860 and such glaring mistakes in the Survey of Mangalore town wherein patta land is shown as Poramboke are to be found in several places and are even now rectified by courts-Civil and Revenue.

14. The appellant therefore prays that justice may be done to him by cancelling the orders of the Tahsildar and Collector and by ordering the inclusion of the land under reference (T.S. No. 229) in his patta at the ordinary dry or garden rate of assessment just as T.S. No. 226, 230 or 227 and refund to him the value of Rs. 18-12-0 collected unjustly from him, for which act of justice the Appellant shallever remain grateful.

15. The appellant begs to submit that though the order of the District Collector appealed against purports to have been passed on 6-12-1923, it was received by the appellant only on 10-12-1923 and this appeal is within time.

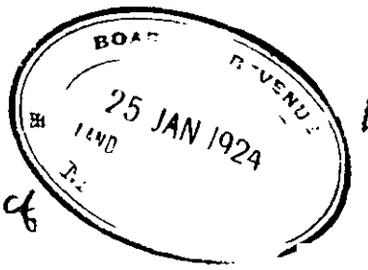
Mangalore,
7- 1- 1924.

Appellant.

List of Enclosures.

1. Order of the District Collector of South Kanara

6



B409

3. Certified copy of the plan. 196

4. True copy of the appeal memo before the District Collector of South Kanara.

Mangalore,
7- 1- 1924

Appellant.

B.175/24

A.S.

Endt B.175 & 16-1-24

Returned

2. The petitioner should produce a duly stamped and authenticated copy of the Tahsildars order and resubmit the papers within one month from the date of receipt of this order. The copy now produced is unauthenticated.

Manmadenay
16/1
For Secretary
Board of Revenue
(Land Rev. & Let A).

CRG
12-1-24 Rs 15 Vy

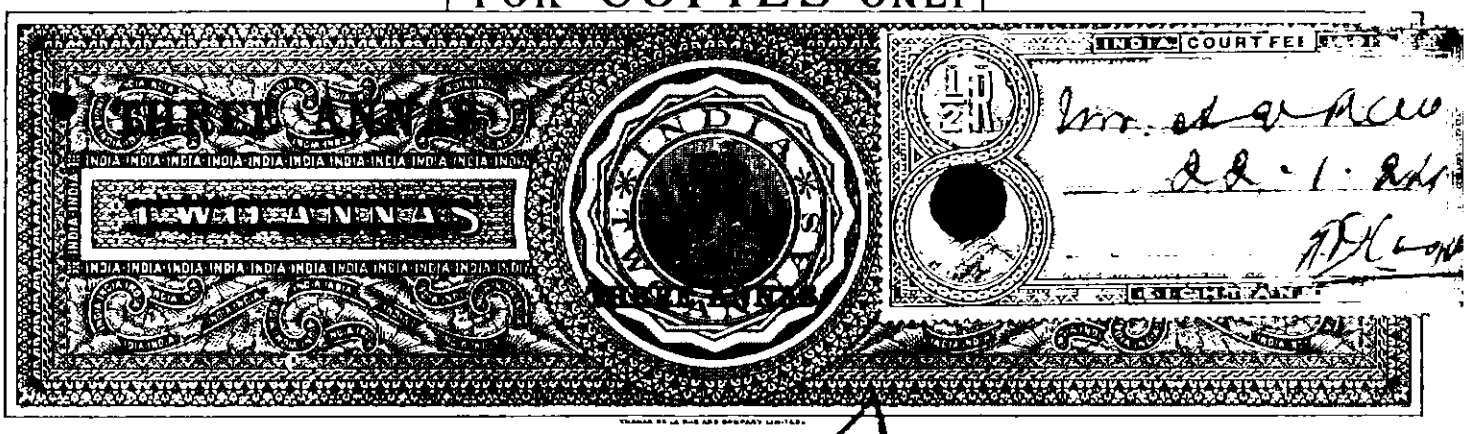
To the petitioner with petition and encls and unpunched C.f. labels for Rs 2-8-0.

Resubmitted with the authenticated copy of the Tahsildar's order, duly stamped.

Mangalore 2

Petitioner

FOR COPIES ONLY



Copy of order passed by the Tahsildar Mangalore Taluk in D.R. Case No. 344/1332.

Order.

T.S. No 229 of Kodialbail is assigned to Francis Kunha, with effect from Fasli 1333, subject to a ground rent of Rs 225 per acre as sanctioned by the Collector. The requisite site value has been collected. The assignment will be subject to the usual condition against alienation to a non British subject. The assessment should be collected from the year of settlement.

30-6-1923 signed T.B. Shankar Rao
Tahsildar.

Application No 1350/23 made by Francis Kunha — 14-12-23
Stamps called for on — do
Do produced on — do
Copy received on — 16-1-24
Copy delivered on — 16-1-24

Copied by MMS compared by [illegible]
T. No. 89

Errors if any
True copy
Examined
Head accountant
Treasurer

4344

13-12-23.

Hr. A. N. Ivarna

Шанцев

D.Dis.No.7105-23-A1.

Proceedings of the Collector of South Kanara, dated the 6th December 1923.

****

G. W. Wells, Esquire, M.A., I.C.S.

****

Land - Mangalore Town - Codialbail village - S.No.229 - Levy of site value and ground rent - petition - Francis Gunha - orders passed. Petition dated 9th November 1923.

Read Mangalore Tahsildar's N.Dis.4120 Sup 23 dated 24th November 1923.

Order.

The petitioner appeals against the order of the ---- Tahsildar of Mangalore in D.R.344/1332 dated 30th June 1923 assigning to him S.No.229 of Codialbail with effect from -- fasli 1333, subject to ground rent of Rs.225/- per acre as sanctioned by me, and directing that assessment be collected from the year of settlement.

2. The petitioner alleges that the land is his warg wrongly shown as poramboke at Settlement, that the site ---- value and ground rent levied are exorbitant, and that the -- levy of back assessment from the date of Settlement is ----- wrong.

3. The land is in Mangalore Town the survey of which is binding on all parties. If the petitioner was aggrieved by the registration of the land as poramboke at Settlement he should have exercised his remedy in time. I cannot go behind the Settlement. The portion of the Tahsildar's order which directs the levy of back assessment cannot be justified, and is cancelled. Subject to this modification the order is confirmed as I do not consider the petitioner to be entitled to any further relief.

For Collector.

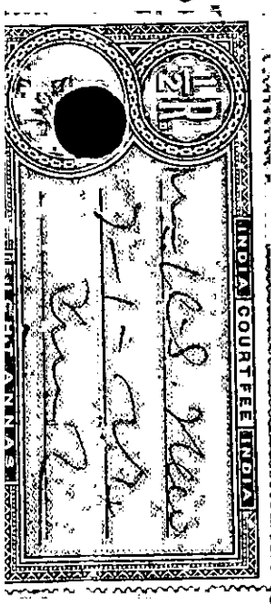
To the petitioner through his vakil Mr.A.C.Gonsalves,B.A.,B.L Mangalore.
To the Tahsildar, Mangalore with records (one file) returned.

D.Dis.8/12.

District = South Kanara

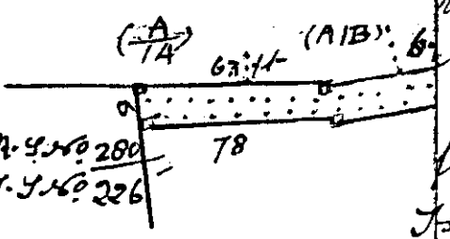
Taluk Mangalore

9



the plan of
boke lane applied by
ner for darkhast
R. S. N
T. S. N mboke road
No. 10
belonging to Ingnes D'sa

R. S. No. 264
T. S. No. 227



to belonging to Mr. Jra
nha (Petitioner)
plot belonging to Mrs M.
Fernandes

(Sd) H. Rangappaya
Shanbhogue

Index as per Ta

Errors if any

Town Survey Nos	Description		
229	Lane - Parambake		
228 & 232	Road — do —		
230	Plot belongs to Mar		
226	— do — Frances Rukaroly		
227	— do — Mrs. Ferna		

C. No. 3150. Sketch

made by 13-10-23
20-10-23
24-10-23
27-10-23
27-10-23

(True copy)
Sketch fees —
Srinivasan
Head accountant

10

Assignment - Land (S. Kanara) - Mangalore town - Codialbail Vge - S No 229 - Levy of critical price and ground rent - Francis Cunha - Petition

B.409/24-A

Refer B.409-24-1 & 31-1-24

Forwarded to the Coll^r of S. Kanara for submission of the connected records with such remarks as he may wish to offer.

31/1

CEA 24.1.24

4.10 Ln 31-1

18.

the Coll^r of S. Kanara & petn & encls to be returned

1-2-'13

Ref.C.No.1439-A1-24. South Kanara Collector's Office,

Camp Coondapoor, 9th March 1924.

B1131

From

C. A. Souter, Esquire, I.C.S.,

Collector of South Kanara.

15 MAR 24 LAND REVENUE DEPT. MADRAS

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Reference: Board's No.B.409-24-1, dated 31st ------- January 1924.

Assignment - Land - Mangalore Town - Codialbail village - S.No.229 - Levy of site value and ground rent petition to the Board - Francis Cunha - Records submitted.

*****

The land in question is T.S.No.229 of Codialbail ---- village within Mangalore Town. It was registered at ------ Settlement as Poramboke lane and leads from the main road -- T.S.Nos.228 and 232 to the petitioner's house and garden --- T.S.No.226. A sketch of the land prepared by the Town ---- Surveyor is in the records of D.R.344/32 submitted herewith.

2. The petitioner applied to the Tahsildar of ------- Mangalore for the inclusion of this plot in his patta on the ground that it originally formed portion of (patta) warg No.65 of -- Codialbail village which at Settlement was demarcated as ---- S.Nos.226,229 and 230, that S.No.229 then registered as ---- Poramboke lane is a blind alley leading only to petitioner's house in S.No.226 and is not useful to anybody but himself.

3. On the recommendation of the Tahsildar supported by that of the Divisional officer, sanction was accorded by the then Collector, Mr. Nedungadi for the transfer of the -- plot to Ayan for assignment subject to payment of site value at Rs.375 per acre and ground rent at Rs.225 per acre. The Municipal Council who were referred to in the matter having declared that they had no objection to the assignment of the plot, the land was formally assigned to the petitioner by

the Tahsildar subject to the payment of site value and --- ground rent at the above rates and back assessment from -- the year of settlement.

4. The petitioner then filed a petition before my - predecessor urging his warg claim to the land in question, protesting against the levy of site value and ground rent and praying for the inclusion of the land in his patta at the settlement rate of assessment obtaining for the ------ adjoining garden lands S.Nos.230 & 237. My predecessor -- held that petitioner's warg claim was barred by limitation and that the land being within the town the levy of site value and ground rent at the rates sanctioned was justified. He cancelled however the Tahsildar's order ------- directing the levy of back assessment from the year of --- settlement, as the land had not been used by the petitioner for any other purpose than a pathway.

5. The warg claim urged by the petitioner cannot now be admitted for the following two reasons:-

(1) because in G.O.No.1377 Rev. dated 10th May 1911 the Government have declared that the Survey in Mangalore Town should be held to be valid and legally binding on all parties concerned and (2) becuase the petitioner failed to claim the land either at settlement or within 6 years after- settlement please vide High Court Ruling in S.A.2048/1914.

6. The petition under reference with the records -- noted in the margin is submitted.

1. This office D.Dis.7105-23 dated 6th December 1923.
2. Records of D.R.344/32 of the Mangalore Taluk office.

Your obedient servant,

For Collector.

11-3

M.D'S.11/3.

11.3.24

11.3.24

C.F. 20 (a)—4-2-14

DRAFT FOR APPROVAL.

Office.

Enclosures.

Despatch No.

When given to fair-copying

Fair-copied by

Fair copy compared by

When despatched

Register No. B 409/24 —— Q to
Ref. of 31.1.24 } Q to
B 1131/24 } and

From

Subject.

Assignment - Land (South
-ra) - Mangalore town -
229 - site ~~vacant and~~ ~~gra~~
~~vacant~~ - ~~Mangalore~~ Private.
To Francis Lanza - Re
THE Petn - Orders pa

Res (Mis).

Rec'd from
for the

Resn (Mis) 897
14-4-24

After careful Consideration of the case, the Board is not prepared to admit the wang (patta) claim advanced by the petr but would allow the petitioner to have the land (S.No. 229), as a matter of equity, without further payment of ~~assessment~~ ground rent provided he does not claim any refund of the amounts already collected.

The Collr is requested to Communicate the substance of these orders to the petr.

2. The petn is ret with the forgoing enclosures.

14/4/24 for [illegible]

During Settlem
the Board ordered that
unprofitable areas up
one cent were to be
-divided and registere
poramboke if the owne
required that this shou
be done. Subsequently
when the inconvenie
of having a portion
one's land registered
poramboke became a
-rent, the former o
of these poramboke as
for their inclusion in
pattas. — This reques
has usually bee
treated as a darkhast
and the land assigned

under darkhast rules

2. The Civil Courts have usually declined to admit claims made after the period of limitation and that non-payment of assessment amounts to a constructive relinquishment. Anyhow, in this case, limitation could be pleaded with a good chance of success. Further, as other and more important cases of the same kind may at any time arise, the Board would not admit the waraj (patta) claim, but would allow the petitioner to have the land, as a matter of equity without further payment of ~~interest~~ or ground rent provided, he does not claim any refund of what he has paid already.

also, it is understood, the Board considers that there are several rulings that

3. The petitioner is referred the collector for orders his petition to the Board

Proceedings of the Board of Revenue, Land Revenue and Settlement.

M.E.Couchman, Esq., I.C.S., Commissioner of Land Revenue.

No.897, Mis., dated the 14th April 1924

****

Read the following:-

Petition from Francis Chunha, Kodialbail village, Mangalore Town, South Kanara district, dated 22nd January 1924.

Board's Ref. No. B.409-24-1, dated 31-1-1924.

Letter from the Collector of South Kanara, Ref. C.No.1439 A-1-24, dated 9th March 1924.

RESOLUTION:

Assignment - Land (South Kanara) - Mangalore Town - S.No. 229 - Private sale - Francis Cunha - Revision petition - Orders passed.

After careful consideration of the case, the Board is not prepared to admit the "warg" (patta) claim advanced by the petitioner but would allow him to have the land (S.No.229), as a matter of equity, without further payment of ground rent provided he does not claim any refund of the amounts already collected.

The Collector is requested to communicate the substance of these orders to the petitioner.

2. The petitioner is referred to the Collector for orders on his petition to the Board.

(True Extract).

(Sd.) W.Scott Brown,
Secretary.

To the Collectorof South Kanara, with Dis. files.
" the petitioner, with 2 enclosures (para 2 only).
through the Collector of South Kanara.

Forwarded

(By Order). C/C.

Senior Superintendent.

16/4/24

M/
Secy
A.S.

Assignment - Land (S. Kanara
Mangalore Taluk - S. no. 229
Private Sale - Francis Gunpa
Revision petn.

pp 1-13 cf B. 409/24
p. 14 cf Bos Refce dt 31-1-24
pp 15-16 cf. B. 1131/24.

To Asst Secy.

The facts of the case
are clearly stated in the
pp 15-16 cf. Collrs report. The petrs
contention is that S. no. 229 (5 cen
is his patta land but wrongly
para 5 p. 2 cf. classified at Settlement as
poramboke He therefore reque
that the private sale of the ra-
para 14 at p. 5 cf may be cancelled and that the
site in question may be
ordered to be included
his patta. The warg (patta)
urged by the petr cannot s
p. 16 cf vide para 5 of the Collrs letter. Refce
also. Solicited to A's remarks
(Q) D. D. 402 MS 10-3-22 on p. 5 of (Q) re a similar cas
the Collrs' report on p. 5 of (Q) s

~~for perusal~~
For orders.

The Collector's order dy 16.12.23 seems reasonable There would appear to be no grounds for interference For orders whether the petition may be dismissed.

22-3-24

23/3/24

The Survey section will please note contents of letter The Survey entry is wrong in the petn. for 21/3

I. A.S. (L.A.)

The survey of the Mangalore taluk was carried out under the provisions of the Survey & Boundary Marks Act XXVIII of 1860 and was completed in 1894 Under Section XXV of that Act the boundary determined by the Sett. Officer is final only in disputed cases. It will be seen from the Govt's leader ... p.11 G.O. No 7330 Revs. dy. 10-12-06 that even ... matters finally can be claimed ... the procedure prescribed in the section such as the issue of notices, was followed. The petitioner states that he became aware of the erroneous demarcation only in July 1920. Even assuming that in the present case there was a dispute at the time of the survey, it will be difficult for Govt. to prove

that the prescribed notice was issued to the petitioners.

Subsequent to the cadastral survey of the Mangalore taluk the Mangalore Municipality was surveyed in accordance with the Town Survey rules. The survey was commenced under Act XXVIII of 1866 and completed under Act IV of 1897. Even in the case of surveys carried out under the latter Act, the High Court has held that the Survey Officers order is pass only in disputed cases — vide judgment at p. 17 of G.O. No. 1709 Rev. dt 14-7-20 & para 2 of the Local Govt's letter at p. 9 of the G.O.

VK
2-4-24

In the circumstances provided above it does not seem equitable to brush the petrs claim aside on the assumption that his representation is barred by limitation. It is admitted that there has been a mistake in that Sy No. 229 used as pathway to one house has been wrongly registered as per joke at the survey. There seems no objection to restore the land to the petrs patta the present registration being cancelled provided the petrs do not ask for the refund of the amounts already collected. The extent of Rs. 6 is apts all 5 cents.

This may be done just issued probably loses a suit. VK 4/4.

Vide para 2 on p. 10. apparently he wont ask for refund VK 4/4.

✓ VK
3/4/24

4

Please flag the pff.'s original application for the land from the Twp. (in 1920)

Mr. H
9.10.24

Respectfully - Please see the applic. at page 10 of (G) Metabs recommendation is at page 5 (G1)

JR
9/16/24

Thousands of similar cases have cropped up in the years

During settlement, the Bd. ordered that all unpropitious areas up to 1 acre were to be subdivided & registered in paramount of the owners requested that it be closed to dower. Subsequently, when the inconvenience of having a portion of one's land registered in paramount became apparent, the former owners of these paramount applied for their inclusion in their patents, & the request has usually been granted. Doubtless the land consigned under the

5 20

Abbott Rules

The civil courts have usually declined to entertain claims made after the period of limitation & I think that there are several rulings that non-payment of assessment amounts to a constructive relinquishment. Anyhow, in this case limitation could be pleaded with a good chance of success. As other & more important cases of the same kind may at any time arise I would not adopt the way (of calling) claim, but allow the man to have the land) without further payment of ~~the~~ sale value or G.R. provided he does not claim any refund. ~~as a matter of~~

as a matter of refund

A

A.S.

Draft for q/u

NLL
9.IV.24

To A.S.

Draft submitted.

2. With reference to the portion marked A above, it is sub-soil that has site value (has been Collected already, the draft embodying this portion has been slightly altered.

p.36 of (G)

10.4.24

for
11/4/24

11/4